

STATE OF MICHIGAN
COURT OF APPEALS

In re S. A. MARSHALL, Minor.

UNPUBLISHED

July 16, 2015

No. 325047

Oakland Circuit Court

Family Division

LC No. 13-806103-NA

Before: FORT HOOD, P.J., and SAAD and RIORDAN, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court order terminating her parental rights to her minor child pursuant to MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm to the child if returned to the parent). The child was born in June 2011. We affirm.

I. FACTUAL BACKGROUND

Petitioner filed a petition on March 4, 2013, alleging that respondent, who is hearing impaired, left the minor child with an unrelated individual without properly planning for the minor. Respondent subsequently was incarcerated in Maryland on an assault charge. She admitted the allegations and the court then assumed jurisdiction over the minor child.

The court ordered respondent to comply with a treatment plan requiring her to obtain housing and income, undergo psychological/psychiatric evaluations, take parenting classes, undergo therapy, and only have supervised visitation with the minor. Because of respondent's long history of substance abuse, she was required to undergo substance abuse services. Also, because respondent was in jail for an assault charge involving the minor child's father, anger management classes were made part of her treatment plan.

Respondent was released from jail in August 2013 and began participating in some of the required services. At the February 2014 permanency planning hearing, the court was informed that respondent had not visited her child since the child's placement in foster care. Moreover, a recent psychological evaluation revealed that respondent had major depression and poly-substance dependence, that she had not completed parenting and anger management classes, and that the suitability of her current residence had not been established. The court ordered initiation of termination proceedings.

The termination petition was filed in March 2014, based on respondent's lack of visitation with the minor, mental health issues, and lack of progress on her treatment plan. A termination hearing held over several dates established respondent's lack of progress and lack of bond with the minor. Following the hearing, the court entered its order terminating respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). Respondent now appeals.

II. TERMINATION OF PARENTAL RIGHTS

A. STANDARD OF REVIEW

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). "We review the trial court's determination for clear error." *Id.* "A decision is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re B & J*, 279 Mich App 12, 17-18; 756 NW2d 234 (2008) (quotation marks and citation omitted).

B. STATUTORY GROUNDS

The trial court terminated respondent's parental rights, finding clear and convincing evidence of the following:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent. [MCL 712A.19b(3).]

Only one statutory ground needs to be established to support termination of respondent's parental rights. *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).¹

The conditions that led to the adjudication of this case continued. At the time of the termination hearing, respondent was no longer incarcerated, but she had failed to visit her child regularly. In fact, she had visited just once while this case was pending. She also failed to plan for her child and failed to comply with, or benefit from, her treatment plan. Her treatment plan required that she receive therapy. Yet, she only sporadically complied with that provision, and showed no benefit. Respondent also had a long history of assaultive conduct. Although respondent was required to engage in anger management classes, she failed to do so. Respondent also failed to adequately address her mental health issues and failed to benefit from parenting classes.

Nevertheless, respondent suggests that termination was improper because petitioner failed to make reasonable reunification efforts. However, respondent failed to object below or indicate that the services provided to her were inadequate. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012) ("The time for asserting the need for accommodation in services is when the court adopts a service plan[.]") (Quotation marks and citation omitted). Furthermore, while petitioner has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondent to participate in the services offered. *Id.* at 248.

Respondent contends that petitioner should have made additional efforts and granted her additional time, considering that she is deaf and had limited financial resources. But, respondent was given evaluations and recommendations to follow, had individual and substance abuse therapy, parenting classes that accommodated her hearing impairment, and was offered weekly visits with her child. Despite all of these services, the caseworker concluded that respondent failed to comply with or benefit from the services offered to her. There was no indication that respondent's failure to progress was because of her deafness. In addition, respondent fails to explain how her deafness hindered her ability to comply with her treatment plan, or why additional time would have altered the outcome. While respondent implies that lack of income was the reason she failed to visit her child, she had a monthly source of income, consistently indicated that she could afford to visit, nor did she clearly communicate that she needed transportation assistance for such visits.

Moreover, respondent left Michigan without a proper plan to provide care for her child and subsequently displayed a lack of interest in her child. She also failed to address her anger issue through the completion of anger management and the foster care worker testified that there was a risk of harm to the child if returned to respondent's care because of her untreated mental health and anger issues.

¹ Although respondent contends that the trial court erred in terminating her parental rights pursuant to MCL 712A.19b(3)(a), that was not a ground for termination.

For the foregoing reasons, we find that the trial court did not clearly err in its decision to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).

III. BEST INTERESTS

A. STANDARD OF REVIEW

Respondent next challenges the trial court's best-interests findings.² "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "We review for clear error . . . the court's decision regarding the child's best interest under MCL 712A.19b(5)." *Id.* (quotation marks and citation omitted). "A trial court's decision is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id.* at 41 (quotation marks, citation, and brackets omitted).

B. ANALYSIS

The trial court did not clearly err in finding that termination was in the child's best interests. In determining the best interests of a child, the trial court may consider the child's bond to the parent, the parent's parenting ability, the advantages of a foster home over the parent's home, and the child's need for permanency, stability, and finality. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). "[O]nce a statutory ground is established, a parent's interest in the care and custody of his or her child yields to the state's interest in the protection of the child." *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009).

Although respondent claimed that she loved her child and was bonded with her, the foster care worker testified that there was no bond between respondent and her child, and the child did not even remember respondent. The child hid from respondent when she saw her and tried to run out of the room during respondent's only visit. Respondent's behavior during the visit also was a cause for concern. Moreover, respondent failed to plan for her child properly, as she admitted that she lacked stability in housing and failed to comply with her treatment plan. There also were serious concerns in respondent's latest psychological evaluation.

For these reasons, a preponderance of the evidence established that termination of respondent's parental rights was in the child's best interests. Therefore, we hold that the trial court did not clearly err in terminating respondent's parental rights.

IV. CONCLUSION

² We reject petitioner's claim that this issue is waived for failure to provide the relevant transcripts. We are able to review this issue based on the trial court's detailed written findings.

The trial court did not err in finding clear and convincing evidence of the statutory grounds for termination. Nor did the trial court err in finding that termination was in the child's best interest. We affirm.

/s/ Karen M. Fort Hood
/s/ Henry William Saad
/s/ Michael J. Riordan